

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 240.]

The Committee on Private Land Claims, to whom was referred the claim of B. E. Edwards to certain land in New Mexico, renew and adopt the annexed report, made at the first session of the 35th Congress, and recommend the passage of the bill accompanying this report.

IN THE SENATE OF THE UNITED STATES, *March 8, 1858.*

The Committee on Private Land Claims, to whom was referred the claim of B. E. Edwards to certain land in New Mexico, have had the same under consideration, and adopt and submit the following report, heretofore made by the committee upon this case:

On the 16th day of August, 1847, the land commissioners for the county of Bexar, and State of Texas, issued to one Andres Flores a certificate for 640 acres of land as a "head right," of which the following is a copy:

STATE OF TEXAS, }
County of Bexar. } 640 acres, No. 444, second class.

This is to certify that Andres Flores has appeared before us, the board of land commissioners for said county, and proved, according to law, that he arrived in this State previous to the 1st of October, 1857, and that he is a single man, and has resided in the same three years, and performed all the duties required of him as a citizen, and never having received a certificate for the quantity of land now applied for, he is entitled to six hundred and forty acres of land.

Given under our hands and the seal of the county court at San Antonio, this 16th day of August, A. D. 1847.

THOMAS WHITEHEAD,

Chief Justice and ex-officio Pres't Board Land Comm'rs.

JAMES B. LEE, }
WM. SMALL, } *Commissioners.*

Attest: THOS. H. O. S. ADDICKS,

Cl'k County court Bexar county, ex-officio Cl'k B. L. Comm'rs.

By BEN. E. EDWARDS, *Deputy.*

The said Andres Flores, by deed dated the 17th day of August, 1847, conveyed all his right and title to said certificate (No. 444) to Benjamin E. Edwards, who caused the said certificate to be located upon a certain tract of land within the Bexar land district, and a survey thereof to be made on the 8th of September, 1849, as appears from a duly certified copy of the original survey, which is in the words and figures following, to wit:

“STATE OF TEXAS, }
District of Bexar. } *Survey No. 16.*

“Field notes of a survey of 640 acres of land made for Benjamin E. Edwards, assignor of Andres Flores, it being the land to which he is entitled by virtue of a certificate No. 444, 2d class, for 640 acres of land, issued by the board of commissioners of Bexar county to Andres Flores, dated August 16, 1847, said survey containing a salt lake or saline, known as the ‘Salina de San Andres’ or ‘Salina del Cerro Redondo,’ and lying between the Sacramento and Organ mountains. Said survey is No. 16, in section No. 15, situated on the east side of, and about five miles from, the Cerro Redondo, and N. 6° E., 57 miles from the springs known as San Nicholas springs, beginning at a point N. $3\frac{1}{2}^{\circ}$ E. 116 miles, 1,140 varas, from a stake set at the ferry north of the town of El Paso del Norte, on the road between said town and Santa Fé, being the southwest corner of survey No. 1, made by M. B. Hays, a stake and mound for southwest corner of this survey; thence N. $1\frac{1}{4}^{\circ}$ E., 1,100 varas, across the wagon road to said saline; salado, marked E, for northwest corner of this survey, from which a mesquite, two inches diameter, bears N. $48\frac{1}{2}^{\circ}$ E., 16 varas; thence S. $88\frac{3}{4}^{\circ}$ E., 1,900 varas, to a post marked \times for northeast corner; thence S. $1\frac{1}{4}^{\circ}$ W., 1,900 varas, to a stake and mound for southeast corner of this survey; thence N. $88\frac{3}{4}^{\circ}$ W., 1,900 varas, to the place of beginning, bearing marked \equiv .

“Surveyed September 8th, 1849.

“JAS. B. ROBERTS, }
 “JAS. R. SHIPMAN, } *Chain-carriers.*

“I, R. S. Howard, deputy surveyor of Bexar district, do hereby certify that the survey designated by the foregoing plat and field notes was made according to law; and that the limits, boundaries, and corners of the same, together with the marks, natural and artificial, are truly described therein.

“R. S. HOWARD,
Deputy Surveyor, Bexar District.”

“SAN ANTONIO, November 30, 1849.

“I, James S. McDonald, district surveyor of Bexar district, do hereby certify that I have examined the foregoing plat and field notes, and find them correct, and that they are recorded in my office in Book A, No. 5, page 257.

“J. S. McDONALD,
District Surveyor of Bexar District.”

The lands embraced within the above plat and survey are within the Territory of New Mexico, and the claimant asks Congress to confirm his title to the said tract of land. To understand fully this case, it is necessary to refer briefly to the history of that part of the Territory in which this tract of land is situate.

By the act of congress of the republic of Texas, approved December 19, 1836, the western boundary of Texas was declared to extend to the Rio Grande river. By a map prepared under the direction of the war office, from the most reliable authorities, in 1844, the Rio Grande, also, is laid down as the western boundary of Texas. After the annexation of Texas to the United States, this government recognized and maintained the boundaries of Texas as defined by the said act of congress of the republic of Texas, of December 19, 1836. Under and by virtue of the act of Congress, approved September 9, 1850, the district of country in which this land is situate was acquired by the general government from the State of Texas. The action of the government subsequent to the annexation of Texas has conceded that the jurisdiction of Texas included the territory in question prior to the relinquishment of the same to the United States; so that, from the date of the certificate from the board of commissioners to a period beyond the location and survey of this tract of land, this part of the territory of the State of Texas was subject to location and settlement under authority from said State.

The committee, therefore, find that the State of Texas, having the jurisdiction, did, by its proper officers, issue a certificate of location, No. 444, to Andres Flores, and that the same was located and surveyed prior to the relinquishment of title by the State of Texas to the general government, and that the claimant only required a patent from the State of Texas, to which he was legally entitled, to form a complete and perfect title to the said tract of land.

The legislature of Texas, by an act approved December 2, 1850, required the commissioner of the general land office of the State of Texas to issue patents for certain lands therein named, included in which was the tract of land in question. But the State of Texas having, prior to the passage of the said act, relinquished her title to the territory in which this tract of land is situate, a patent issued under the said act would have been of no validity, for the title that had theretofore been in the State of Texas had passed to the government of the United States.

The claimant had an equitable or inchoate title under the State of Texas; and the question whether this government is bound by law and good faith to confirm such inchoate titles in a territory acquired from another power, which such power, under the laws, usages, and customs thereof, would have confirmed had such territory continued in their possession, is a question so well settled, both by the laws of nations and the decisions of the Supreme Court of the United States, (see 4 Peters, 512; 7 Peters, 87; and 10 Peters, 330,) that your committee do not deem it necessary to discuss the question.

The government of the United States, by virtue of said act, approved September 9, 1850, having become possessed of the territory in which the tract of land is situate, is therefore bound to confirm the title of

the petitioner to the same extent as the State of Texas would have done had she continued in possession thereof.

The committee therefore report back the bill without amendment, and respectfully recommend its passage.